IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Hazi Mohd. Umar Vs. State of Rajasthan & Ors.
S.B. CR. REVISION PETITION NO.812/2006

Against order dated 05.06.2006 passed by Judicial Magistrate, Jodhpur in Criminal Case No. 621/2004 - State Vs. Hazi Mohd. Umar.

DATE OF ORDER :: 7th December , 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Sandeep Mehta for petitioner.
Mr. Vishnu Kachhawaha, Public Prosecutor.

BY THE COURT:

By this petition, challenge has been made to order dated 05.06.2006 passed by Judicial Magistrate, Jodhpur in Criminal Case No. 621/2004 - State Vs. Hazi Mohd. Umar taking cognizance against the petitioner for offence under Sec. 5/10 of the Rajasthan Video Films (Regulation of Exhibition) Act, 1990 (hereinafter, for short, 'the Act of 1990') and Sec.51, 52A/63, 68 of the Copyright Act, 1957.

The facts giving rise to the present case, in brief, are that SHO, Police Station, Sadar, Jodhpur conducted a search in the premises of Golden Cine Video Parlour, Ghas Mandi, Jawahar Khana Road, Jodhpur and during the course of search found Compact Diskettes (CDs), Video Cassettes, DVD Player and a Video Projector and after usual investigation filed chargesheet against the petitioner, who is said to be holding licence issued under the provisions of Rajasthan Video Films (Regulation of Exhibition) Act, 1990 for running a Video Parlour. The learned trial Court, vide its order dated 05.06.2006 took cognizance against the petitioner and by order dated 06.06.2006 framed charge for the offence under Sec. 5/10 of the Act of 1990 and Sec.51/63 and 52A/68 of the Copyright Act, 1957, hence the present revision petition has been filed to set aside the order impugned.

The contention of the learned counsel is that the learned trial Court has wrongly interpreted Sec.2(h) of the Act of 1990. It has further been submitted that possession of Video Cassettes, CDs etc is not punishable under the

Copyright Act or any other Act. It has also been submitted that it is not the case of the prosecution that the video films of different pictures were being screened or were being displayed in the video parlour. According to the learned counsel, in the above circumstances, the accused needs to be discharged as no offence is made out against him either under the Copyright Act or under the Act of 1990.

On the other hand, the learned Public Prosecutor has not been able to support the order passed by the learned trial Court. The learned Public Prosecutor also could not point out any provision under the Copyright Act that possession of Video films, available in the market, is punishable under the provisions of Copyright Act or any other Act.

After having considered the submissions made before me, it appears that in the present case the point which requires consideration is as to whether the impugned order passed by the trial Court suffers from legal infirmity, therefore accused is liable to be discharged?

It is to be seen that petitioner is having a valid licence to run a video parlour. It is also not in dispute that in a search conducted of the premises of petitioner certain CDs etc. were found from his possession. It is also an admitted position that the CDs were not being displayed at that time. The provisions of the Copyright Act, particularly Secs. 51, 52A, 63 when gone through nowhere suggest that possession of the CDs of films etc is an offence punishable under Sec. 68 of the Act. It is further to be seen that Sec.2(h) of the Act of 1990 states that "Video Cinema" means the entire place licenced for exhibiting by means of video on a screen of one hundred or more centimeters and admitting fifty or more but not more than one hundred and fifty persons in a permanent building and includes appurtenances, plants and apparatus located therein. Thus, it appears from the definition that screen should be 100 cms or more and the sitting capacity of the place should be for atleast 50 or more persons. In the instant case, as per the impugned order, sitting capacity was 77 and the screen was more than 100cms. Therefore, there is no hesitation in reaching to the conclusion that petitioner

was having a valid licence for running a video parlour and the sitting capacity as well as the screen of video cinema parlour was within the prescribed limit under the Act.

In view of above factual aspects, which have not been controverted, taking into consideration the provisions of the Act of 1990 and the Copyright Act, I am of the opinion that the trial Court has not properly appreciated the provisions of both the Acts and passed the impugned order dated 05.06.2006 and framed charges against the petitioner, therefore, I find substance in the contention of the learned counsel that order of taking cognizance as well as the order of framing charge against the accused petitioner requires to be set aside. This answers to the point framed by me.

In the result, the revision petition succeeds and the impugned order passed by the learned trial Court dated 05.06.2006 taking cognizance and the consequential order dated 06.06.2006 framing charge against the petitioner are hereby quashed and set aside. The accused is discharged of the charges framed against him for the offence under Sec.

5/10 of the Act of 1990 and Sec.51/63 and 52A/68 of the Copyright Act, 1957.

(**SATYA PRAKASH PATHAK**)**J**.

/jpa